

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

MITCHELL K. DAVIS,

Plaintiff,

v.

FUJITEC AMERICA, INC., a Foreign Profit
Corporation; NATIONAL ELEVATOR
INSPECTION SERVICES, INC.; and
MICHAEL J. PANZO, an Individual,

Defendants.

No.:

NOTICE OF REMOVAL OF DEFENDANT
FUJITEC AMERICA, INC.

TO: Clerk of the Court

AND TO: Mitchell K. Davis, Plaintiff

AND TO: Shane O'Rourke, Attorney for Plaintiff

Pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, Defendant Fujitec America, Inc. (Fujitec) removes to this Court the state court action described, below. In support of this Notice, Fujitec states as follows:

I. BACKGROUND

1. On July 28, 2021, Plaintiff Mitchell K. Davis filed a Complaint (the Complaint) in Lewis County Superior Court (Cause No. 21-2-00429-21), entitled *Mitchell K. Davis v.*

1 *Fujitec America, Inc., et al.* (State Court Action).¹

2 2. Defendant Fujitec was served with the initial pleading on August 18, 2021,
3 when service of Summons and Complaint was effectuated on it by serving Fujitec's registered
4 agent, CT Corporation System. This Notice of Removal is timely filed within 30 days of both
5 the receipt and service of the Complaint on Fujitec, under 28 U.S.C. § 1446(b).²

6 **II. JURISDICTION**

7 3. The State Court Action may be removed to this Court pursuant to 28 U.S.C. §
8 1441(b), because this Court has jurisdiction under 28 U.S.C. § 1332(a).

9 4. Complete diversity exists between the parties because Fujitec and Plaintiff are
10 citizens of different states.³ Fujitec is a Delaware corporation with its principal place of
11 business in Mason, Ohio. Plaintiff Mitchell K. Davis is believed to be a resident of the State
12 of Washington. Defendant National Elevator Service, Inc. is alleged to be a foreign
13 corporation believed to be a Delaware corporation with its principal place of business in
14 Missouri. Defendant Michael J. Panzo is understood to currently be domiciled in Hawaii. At
15 the time of this filing, it is understood that Michael J. Panzo has not yet been served with the
16 Summons and Complaint.

17 5. The Complaint does not specify the amount in controversy. When a complaint
18 does not do so, the defendant may do so in the notice of removal.⁴ Further, a notice of removal
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20 ¹ Complaint, *Mitchell K. Davis v. Fujitec America, Inc., et al.*, No. 21-2-00429-21 (Lewis Cty., Wash.,
21 July 28, 2021) (the "Complaint").

22 ² See 28 U.S.C. § 1446(b)(1) (permitting removal within 30 days after the defendant receives services
23 of process); see also *Anderson v. State Farm Mut. Auto. Ins. Co.*, 917 F.3d 1126, 1130 (9th Cir. 2019)
24 (holding that "the thirty-day removal clock under 28 U.S.C. § 1446(b)(1) does not begin upon service
25 on and receipt by a statutorily designated agent, and began in this case only when [the insurer] actually
26 received [the insured's] complaint").

³ See *Kanter v. Warner-Lambert Co.*, 265 F.3d 853, 857 (9th Cir. 2001) (holding that at the removal
state, the defendant need only "allege (not prove) diversity").

⁴ *Dart Cherokee Basin Operating Co., LLC v. Owens*, 574 U.S. 81, 84 (2014).

1 “need include only a plausible allegation that the amount in controversy exceeds the
2 jurisdictional threshold.”⁵ Defendant understands Plaintiff seeks more than \$75,000 in
3 damages.

4 **III. VENUE AND ASSIGNMENT**

5 6. Venue is proper in the United States District Court for the Western District of
6 Washington because it is the district embracing Lewis County, the place where the State Court
7 Action is pending.

8 7. Assignment is proper to the Tacoma Division because Plaintiff filed his
9 Complaint in Lewis County, Washington.⁶

10 **IV. PROCEDURAL REMOVAL**

11 8. In accordance with 28 U.S.C. § 1446(a) and LCR 101, a true and correct copy
12 of the process, pleadings, and orders, as well as any additional records in the State Court Action
13 are attached to this Notice.

14 9. In accordance with 28 U.S.C. § 1446(d), Fujitec will file, in Lewis County
15 Superior Court, a notice to Plaintiff and to the State Court Clerk.

16 10. By filing this Notice, Fujitec does not waive, and expressly reserves, all rights,
17 defenses, and objections of any nature that Fujitec may have against Plaintiff’s claims.

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25 ⁵ *Id.* at 89.

26 ⁶ *See* LCR 3(e).

1 DATED: August 31, 2021

2 BULLIVANT HOUSER BAILEY PC

3
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CERTIFICATE OF SERVICE

I hereby certify that on the 31st day of August, 2021, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the persons listed below:

Attorneys for Plaintiff:

Shane M. O'Rourke
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Dated: August 31, 2021

/s/ Sally Gannett
Sally Gannett, Legal Assistant